



TOWN OF LAUDERDALE-BY-THE-SEA

ROUNDTABLE ITEM REQUEST FORM

Town Attorney

Department Submitting Request

Susan L. Trevarthen

Mayor/Commissioner Name

Meeting Date / Time

- ☐ April 28, 2010 / 7:00 PM
- ☐ May 26, 2010 / 7:00 PM
- ☒ June 9, 2010 / 7:00 PM
- ☐ June 23, 2010 / 7:00 PM

Deadline w/o Backup

- ☐ April 21, 2010 / Noon
- ☐ May 19, 2010 / Noon
- ☐ June 7, 2010 / Noon
- ☐ June 16, 2010 / Noon

Deadline w/ Backup

- ☐ April 19, 2010 / Noon
- ☐ May 17, 2010 / Noon
- ☒ June 2, 2010 / Noon
- ☐ June 14, 2010 / Noon

ITEM/ITEMS*: Review Ethics Ordinance

AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, CREATING SECTION 2-26 OF THE TOWN CODE OF ORDINANCES REGARDING ETHICS REQUIREMENTS FOR THE MAYOR AND TOWN COMMISSIONERS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE

ACTION OR OUTCOME EXPECTED:

SPECIAL NOTES:

***ITEMS LISTED THAT WOULD BE GOING TO REGULAR COMMISSION AGENDA REQUIRE NEW AGENDA ITEM REQUEST FORM WITH AMPLE TIME TO PRODUCE BACKUP**

June White

From: Susan L. Trevarthen [STrevarthen@wsh-law.com]
Sent: Monday, May 24, 2010 6:47 PM
To: June White
Cc: Nekisha Smith; Roseann Minnet; Stuart Dodd; Birute Ann Clotey; Scot Sasser; Chris Vincent; Connie Hoffmann
Subject: Code of Ethics ordinance

Attachments: Section 112.3143.doc; Ethics Ordinance 5 21 10.doc; Memo re Ethics Ordinance 5.24.10.doc

Please place this draft ordinance on the agenda for the June 9 roundtable, along with the cover memo and the other document (which contains relevant excerpts of state statutes). Thank you.



**WEISS
SEROTA
HELFMAN
PASTORIZA
COLE &
BONISKE, P.L.**

Susan L. Trevarthen, Esq., AICP
Member

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The 2009 Florida Statutes
Title X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS
Chapter 112 PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS

112.3143 Voting conflicts.--

(1) As used in this section:

(a) "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(b) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(2) No state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(3) (a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the

special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History.--s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2.

Related statutory sections:

112.311 Legislative intent and declaration of policy.--

(1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(2) It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private

economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

(3) It is likewise essential that the people be free to seek redress of their grievances and express their opinions to all government officials on current issues and past or pending legislative and executive actions at every level of government. In order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions, either by direct communication with such officials or by solicitation of others to engage in such efforts, be regularly disclosed to the people.

(4) It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

(6) It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

History.--s. 1, ch. 67-469; s. 1, ch. 69-335; s. 1, ch. 74-177; s. 2, ch. 75-208; s. 698, ch. 95-147.

112.312 Definitions.--As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

* * * * *

(2) "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission,

authority, or political subdivision of this state therein; or any public school, community college, or state university.

* * * * *

(5) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

* * * * *

(8) "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

* * * * *

(15) "Material interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of this act, indirect ownership does not include ownership by a spouse or minor child.

History.--s. 2, ch. 67-469; ss. 11, 12, ch. 68-35; s. 8, ch. 69-353; s. 2, ch. 74-177; s. 1, ch. 75-196; s. 1, ch. 75-199; s. 3, ch. 75-208; s. 4, ch. 76-18; s. 1, ch. 77-174; s. 2, ch. 82-98; s. 1, ch. 83-282; s. 2, ch. 90-502; s. 2, ch. 91-85; s. 3, ch. 91-292; s. 699, ch. 95-147; s. 1, ch. 96-328; s. 1, ch. 2000-243.

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.--

* * * * *

(6) MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

History.--s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217.

112.326 Additional requirements by political subdivisions and agencies not prohibited.--Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part,

provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part.

History.--s. 5, ch. 75-196; s. 12, ch. 94-277.

Title XIX PUBLIC BUSINESS
Chapter 286 PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.012 Voting requirement at meetings of governmental bodies.--No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

History.--s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277.

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WHEREAS, Part II of Chapter 112, Florida Statutes, establishes Standards of Conduct and ethical requirements for public officials, including the elected members of the governing bodies of local governments such as the Town; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION
OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:

SECTION 2. Amendment. Section 2-26 of the Town Code of Ordinances is hereby created to read as follows:

(1) *Requirement to abstain from voting.* Neither the Mayor nor any Commissioner shall vote on any matter affecting a Town vendor with whom the Mayor or Commissioner has any connection, whether in a voluntary or paid capacity. Where a Commissioner or Mayor abstains from voting under this section of Code, within 15 days after the vote occurs, he or she shall file a written disclosure of the nature of his or her interest with the Town Clerk, who shall incorporate the written disclosure into the minutes.

ORDINANCE 2010-__

(2) *Effect of abstaining from voting under this section on obligation to vote.* Section 286.012, Florida Statutes, prohibits a Commissioner or Mayor from abstaining from voting unless there is, or appears to be, a possible conflict of interest under Florida Statutes. In any situation where a Commissioner or Mayor abstains from voting pursuant to this section of Code, the Commissioner or Mayor shall be deemed to be able to abstain because of the existence or appearance of a possible conflict of interest under the statute.

(3) *Requirement not to participate in shade sessions.* Neither the Mayor nor any Commissioner shall participate in a shade session on any litigation matter involving a party adverse to the Town with whom the Mayor or Commissioner has any connection, whether in a voluntary or paid capacity.

(4) *Applicability to related business entities.* The restrictions and prohibitions which are imposed by this section upon any Commissioner or Mayor, by virtue of that person's service (or former service) as a Commissioner or Mayor, shall also be applicable to any business entity in which such Commissioner or Mayor has an employment, independent contractor or material interest. The term "material interest" shall have the meaning indicated by Section 112.312, Florida Statutes.

(5) *Majority of Town Commission unable to vote or to meet in a shade session.* If the application of this provision results in a majority of the Commission being unable to vote or to meet, then the remaining members of the Commission may approve the matter by unanimous vote or participate in the shade session. Alternatively, by unanimous vote of the remaining Commissioners present, the Commission may waive the requirements of this section so that a quorum will be available to meet or to vote, if it finds that such waiver will be consistent with the purposes of this section and will not create or tend to create an appearance of impropriety.

(6) *Statutory standards of conduct.* The Mayor and each Commissioner shall comply with the standards of conduct set forth in Part III of Chapter 112, Florida Statutes, including but not limited to the regulations and prohibitions therein for solicitation or acceptance of gifts, doing business with or appearing before the Town, unauthorized compensation, misuse of public position, conflicting employment or contractual relationships, disclosure or use of certain information, and lobbying.

(7) *Interpretation.* This section is adopted pursuant to home rule and to Section 112.326, Florida Statutes, allowing stricter local regulation of ethics. Where terms used in Part III of Chapter 112, Florida Statutes, are used in this section, they shall be defined and interpreted in a manner similar to how they have been used in that statute. Nothing in this section shall be construed to impair or diminish any stricter ethical standards in Part III of Chapter 112 or any other part of the Florida Statutes, the Charter, the Code of Ordinances or any applicable federal law.

ORDINANCE 2010-__

SECTION 3. Inclusion in the Code. This Ordinance shall become and be made a part of the Code of the Town of Lauderdale-By-The-Sea, Florida, and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 4. Conflicts. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith shall and the same are hereby repealed to the extent of such conflict.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall become effective immediately upon passage on second reading.

SECTION 7. Adoption.

Passed on the first reading, this ____ day of _____, 2010.

Passed and adopted on the second reading, this ____ day of _____, 2010.

Mayor Roseann Minnet

First Reading

Second Reading

Mayor Minnet

Vice-Mayor Dodd

Commissioner Clottey

Commissioner Sasser

ORDINANCE 2010-__

102 Commissioner Vincent _____

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105 Attest:

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107 _____

108 Town Clerk, June White

109 (CORPORATE SEAL)

110 Approved as to form:

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112 _____

113 Town Attorney, Susan L. Trevarthen

Memo

To: Mayor and Town Commission, Lauderdale-By-The-Sea

Cc: Connie Hoffmann, Interim Town Manager

From: Susan L. Trevarthen, Town Attorney

Date: May 24, 2010

Re: Town Ethics Ordinance

As requested at the April 16, 2010, Roundtable meeting of the Town Commission, I have prepared an ordinance creating a Code of Ethics for the Town Commission. Its key points are summarized below.

- The Commission shall not vote on matters affecting a Town vendor with whom they have a paid or unpaid connection. When abstaining from voting under this section, Commissioners shall file a written disclosure with the Town Clerk.
 - Refraining from voting because of a connection to a vendor shall be considered a potential conflict of interest sufficient to excuse the Mayor and Commission from the statutory obligation to vote under Section 286.012, Florida Statutes.
 - The Commission shall not participate in shade sessions where they have a paid or unpaid connection to a party adverse to the Town in the litigation.
 - Both of these prohibitions also apply to business entities related to the Commission.
 - If these prohibitions leave the Commission without a quorum to vote or meet on a litigation matter, the remaining Commissioners can approve the item unanimously or meet. Alternatively, they can waive the prohibitions if they find it consistent with this Code section and find that it will not create or tend to create an appearance of impropriety.
 - The Commission shall also follow the ethics requirements of Part III of Chapter 112, Florida Statutes. The stricter rule shall always prevail. The terms of this Code section shall be interpreted consistently with those of Chapter 112.
-